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INFO OCT-01 IO-14 ISO-00 COME-00 FRB-03 OMB-01 TAR-02

SP-03 SWF-02 AGR-20 AID-20 CIAE-00 INR-11 LAB-06

NSAE-00 OIC-04 RSC-01 SIL-01 STR-08 TRSE-00 CIEP-03

CEA-02 L-03 SCI-06 FEA-02 JUSE-00 AF-10 ARA-16 EA-11

EUR-25 NEA-14 INRE-00 NSCE-00 SSO-00 /200 R

DRAFTED BY EB/CBA/BP/HJWINTER/PAT.OFF/OLIA:MKIRK:JB

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TO USMISSION GENEVA IMMEDIATE

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FOR USDEL TO UNCTAD IGG

SUBJECT:DRAFT RESOLUTION ON REVISION OF THE PARIS CONVENTION ON INDUSTRIAL PROPERTY (RESOLUTION L-16)

REFERENCE: (A) GENEVA'S 4639, (B) DEPARTMENT'S 158601

1. FOLLOWING ARE THE DEPARTMENT'S AND PATENT OFFICE'S SUPPLEMENTAL COMMENTS ON THE OPERATIVE PARAGRAPHS OF RESOLUTION L-16.

2. RE PARA 1 OF RESOLUTION L-16 WE ARE STRONGLY CONCERNED ABOUT UNCTAD UNDERTAKING TO CONSIDER AND MAKE RECOMMENDATIONS FOR "REVISION OF THE PATENT SYSTEM AT THE NATIONAL AND INTERNATIONAL LEVEL." AS WE INDICATED IN REFTEL B, WE
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BELIEVE SUCH LEGAL-TECHNICAL PATENT MATTERS ARE WITHIN THE

SPECIAL COMPETENCE OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO). THIS IS PARTICULARLY THE CASE AS REGARDS THE PATENT SYSTEM AT THE "INTERNATIONAL LEVEL" WHICH CAN ONLY BE A REFERENCE TO THE PARIS INDUSTRIAL PROPERTY CONVENTION. USDEL SHOULD EMPHASIZE THAT THE WIPO COORDINATION COMMITTEE AS RECENTLY AS JUNE 28, 1974 DECIDED TO REQUEST THE DIRECTOR GENERAL OF WIPO TO MAKE A PROVISION IN THE DRAFT BUDGET FOR 1975 FOR THE CREATION OF AN AD HOC GROUP OF EXPERTS COMING FROM STATES BOTH MEMBERS AND NON-MEMBERS OF THE PARIS UNION TO STUDY THE POSSIBILITIES OF REVISING THE PARIS CONVENTION SO THAT IT CONTAIN, IF

NECESSARY, ADDITIONAL PROVISIONS REPEAT ADDITIONAL PROVISIONS OF SPECIAL BENEFIT TO DEVELOPING COUNTRIES. IT MAY BE NOTED THAT THE COMMITTEE TOOK THIS DECISION WITHOUT OBJECTION FROM ANY DELEGATION, INCLUDING TEN DEVELOPING COUNTRIES. AMONG THE DEVELOPING COUNTRIES WERE SRI LANKA (REPRESENTED BY AMBASSADOR PATHMARAJAH) AND INDIA. FYI: THE US AND FRANCE DID NOT OBJECT TO THE DECISION BUT DID RESERVE THEIR POSITION ON THE ESTABLISHMENT OF ANY NEW COMMITTEE UNTIL THE WIPO ADMINISTRATIVE MEETINGS IN SEPTEMBER 1974. WE EXPECT TO SUPPORT THIS DECISION IN SEPTEMBER. END FYI.

3. RE PARAGRAPH 2 OF RESOLUTION L-16 USDEL SHOULD PROPOSE THAT ANY GROUP OF EXPERTS BE GOVERNMENTAL EXPERTS SELECTED BY THE SECRETARY GENERAL OF UNCTAD FOLLOWING APPROPRIATE CONSULTATIONS. DESIGNATION OF GOVERNMENTS FROM WHICH EXPERTS WOULD COME WOULD BE ON THE BASIS OF EQUITABLE GEOGRAPHICAL DISTRIBUTION.

4. RE PARA 3 OF RESOLUTION L-16 ON TERMS OF REFERENCE OF THE GROUP OF GOVERNMENTAL EXPERTS USDEL MAY MAKE THE FOLLOWING OBSERVATIONS AS APPROPRIATE:

(A) IT WOULD APPEAR THAT A GOOD DEAL OF THE WORK THAT MAY BE UNDERTAKEN BY THE UNCTAD GROUP OF EXPERTS WOULD DUPLICATE THE WORK OF THE WIPO PERMANENT COMMITTEE FOR THE ACQUISITION BY DEVELOPING COUNTRIES OF TECHNOLOGY RELATED TO INDUSTRIAL PROPERTY WHICH WAS CREATED IN MARCH 1974. THE LIMITED OFFICIAL USE

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PROGRAM OF THE PERMANENT COMMITTEE INCLUDES SUCH ITEMS AS THE HOLDING OF A SEMINAR TO TRAIN DEVELOPING COUNTRY REPRESENTATIVES IN THE LICENSING OF INTELLECTUAL PROPERTY, THE REVISION OF THE MODEL LAWS FOR NATIONAL INDUSTRIAL PROPERTY SYSTEMS TAKING INTO ACCOUNT THE VARIOUS ECONOMIC AND SOCIAL SYSTEMS AND THE VARIOUS STAGES OF TECHNICAL DEVELOPMENT OF DEVELOPING COUNTRIES, UNDERWRITING THE EXPENSES OF SENDING REPRESENTATIVES OF DEVELOPING COUN-

TRIES TO A SYMPOSIUM IN MOSCOW ON PATENT DOCUMENTATION, AND UNDERTAKING A STUDY WITH A VIEW TOWARD ESTABLISHING A PUBLICATION OF LICENSING OPPORTUNITIES TAKING CARE NOT TO DUPLICATE EXISTING EFFORTS IN THIS AREA.

IN THIS CONTEXT, IT IS IMPORTANT TO NOTE THAT SINCE WIPO IS WELL ON ITS WAY TO BECOMING A SPECIALIZED AGENCY OF THE UNITED NATIONS, ITS AREAS OF COMPETENCE WITHIN THE UN FAMILY SHOULD BE RESPECTED. ACCORDINGLY, SINCE MANY OF THE ITEMS CONTAINED IN THE PROPOSED RESOLUTION ARE THE SUBJECT OF ACTIVE CONSIDERATION AND EFFORTS BY WIPO, THESE ACTIVITIES SHOULD NOT BE DUPLICATED BY UNCTAD.

ON THE OTHER HAND, CERTAIN ACTIVITIES RELATING TO BOTH INDUSTRIAL PROPERTY PROTECTION AND THE TRADE AND ECONOMIC DEVELOPMENT OF DEVELOPING NATIONS, SUCH AS THE POTENTIAL ABUSES FLOWING FROM RESTRICTIVE BUSINESS PRACTICES AND APPROPRIATE REMEDIES FOR SUCH PRACTICES HAVE BEEN THE SUBJECT OF CONSIDERATION BY UNCTAD AND IT IS BELIEVED PROPER THAT THESE ACTIVITIES SHOULD CONTINUE TO BE CONSIDERED BY UNCTAD WITH THE COOPERATION, AS NECESSARY, OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION.

(B) PARA 3(D) OF RESOLUTION L-16, RELATING TO "REVISION OF NATIONAL PATENT LAWS AND POLICIES" MENTIONS SOME OF THE EXTREMELY LEGAL-TECHNICAL ASPECTS OF PATENT LAW (E.G. PATENTABILITY, INVENTORS' CERTIFICATES, UTILITY MODELS) WHICH WE DO NOT BELIEVE UNCTAD HAS THE COMPETENCE OR EXPERTISE TO DEAL WITH.

(C) OUR COMMENTS ABOVE ON REVISION OF THE PARIS CONVENTION CLEARLY RELATE TO PARA 3(E) OF RESOLUTION L-16.

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(D) WE STRONGLY QUESTION THE DESIRABILITY OR NECESSITY FOR UNCTAD TO STUDY THE RELEVANCE AND EFFECTS OF NATIONAL AND INTERNATIONAL REGULATIONS ON OTHER ASPECTS OF INDUSTRIAL PROPERTY RIGHTS SUCH AS TRADEMARKS, SERVICE MARKS, ETC.

5. FOR ALL OF THE ABOVE REASONS USDEL SHOULD WORK WITH OTHER GROUP B COUNTRIES TO OPPOSE OR REDRAFT AS NECESSARY RESOLUTION L-16 TO LIMIT UNCTAD'S ROLE TO ITS AREAS OF COMPETENCE AND EXPERTISE.

6. USDEL SHOULD BE GUIDED BY THIS APPROACH BUT MAY CONSIDER ALTERNATIVE APPROACHES WHICH MIGHT ACHIEVE ESSENTIALLY THE SAME RESULTS. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INDUSTRY, PROPERTY PROTECTION, AGREEMENT DRAFT, UNGA RESOLUTIONS, PATENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: boyleja
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE159727
Document Source: CORE
Document Unique ID: 00
Drafter: MKIRK:JB
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740199-0597
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740724/aaaauiq.tel
Line Count: 168
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) GENEVA'S 4639, (B) DEPARTMENT'S, 158601
Review Action: RELEASED, APPROVED
Review Authority: boyleja
Review Comment: n/a
Review Content Flags:
Review Date: 24 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 APR 2002 by shawdg>; APPROVED <20 FEB 2003 by boyleja>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: RAFT RESOLUTION ON REVISION OF THE PARIS CONVENTION ON INDUSTRIAL PROPERTY (RESOLUTION L-16)
TAGS: EIND
To: GENEVA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005